

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jennifer Smith	Team: Squad #14	CCRB Case #: 201707583	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 09/09/2017 8:59 PM	Location of Incident: [REDACTED]	Precinct: 103	18 Mo. SOL 3/9/2019	EO SOL 3/9/2019	
Date/Time CV Reported Sat, 09/09/2017 11:14 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 09/14/2017 1:00 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Christophe Denicker	13661	955867	103 PCT
2. POM Lance Walter	30215	951417	103 PCT
3. POM Shawn Arigoni	09844	961625	103 PCT
4. POM Sean Phillips	11911	953250	103 PCT
5. POM Joseph Bongiorno	14612	955763	103 PCT
6. POF Jill Ragonesi	02957	955963	103 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM George Moore	08821	956946	103 PCT
2. POM Steven Amato	17444	958244	103 PCT
3. POM Efrain Estrada	11380	955909	103 PCT
4. SGT John Gherardi	4028	945755	103 PCT
5. SGT Nathan Mole	04654	911121	103 PCT
6. CPT Kevin Chan	00000	938209	105 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Christophe Denicker	Force: At § 87(2)(b) in Queens, Police Officer Christopher Denicker used physical force against § 87(2)(b).	A . § 87(2)(g)
B . POM Christophe Denicker	Discourtesy: At § 87(2)(b) in Queens, Police Officer Christopher Denicker spoke discourteously to § 87(2)(b).	B . § 87(2)(g)
C . POM Shawn Arigoni	Force: At § 87(2)(b) in Queens, Police Officer Shawn Arigoni used physical force against § 87(2)(b).	C . § 87(2)(g)
D . POM Sean Phillips	Force: At § 87(2)(b) in Queens, Police Officer Sean Phillips used physical force against § 87(2)(b).	D . § 87(2)(g)
E . POM Christophe Denicker	Force: At § 87(2)(b) in Queens, Police Officer Christopher Denicker restricted § 87(2)(b) breathing.	E . § 87(2)(g)
F . POM Shawn Arigoni	Force: At § 87(2)(b) in Queens, Police Officer Shawn Arigoni restricted Luis Santiago's breathing.	F . § 87(2)(g)
G . POM Sean Phillips	Force: At § 87(2)(b) in Queens, Police Officer Sean Phillips restricted § 87(2)(b) breathing.	G . § 87(2)(g)

Officer(s)	Allegation	Investigator Recommendation
H . POM Joseph Bongiorno	Force: At the 103rd Precinct stationhouse, Police Officer Joseph Bongiorno used physical force against § 87(2)(b) .	H . § 87(2)(g)
I . POM Joseph Bongiorno	Discourtesy: At the 103rd Precinct stationhouse, Police Officer Joseph Bongiorno spoke discourteously to § 87(2)(b) .	I . § 87(2)(g)
J . POM Lance Walter	Discourtesy: At the 103rd Precinct stationhouse, Police Officer Lance Walter spoke discourteously to § 87(2)(b) .	J . § 87(2)(g)
K . POM Lance Walter	Abuse of Authority: At the 103rd Precinct stationhouse, Police Officer Lance Walter threatened § 87(2)(b) .	K . § 87(2)(g)
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
N . POM Lance Walter	Other: There is evidence suggesting Police Officer Lance Walter provided a false official statement in violation of Patrol Guide Procedure 203-08.	N . § 87(2)(g)

Case Summary

On September 9, 2017, Sergeant Nathan Mole of the 103rd Precinct called the IAB Command Center to report that § 87(2)(b) was injured while being taken into police custody. The complaint was received at the CCRB on September 14, 2017.

On September 9, 2017, at approximately 8:59 p.m., Police Officer Lance Walter, Police Officer George Moore, Police Officer Christopher Denicker, Police Officer Shawn Arigoni, and Police Officer Sean Phillips of the 103rd Precinct arrested § 87(2)(b) at § 87(2)(b) in Queens. PO Denicker allegedly kicked § 87(2)(b)'s head (**Allegation A: Force**, § 87(2)(g)) and used profanity toward him (**Allegation B: Discourtesy**, § 87(2)(g)). PO Arigoni and PO Phillips allegedly kicked and punched § 87(2)(b) (**Allegations C and D: Force**, § 87(2)(g)). PO Denicker, PO Arigoni, and PO Phillips allegedly restricted § 87(2)(b)'s breathing (**Allegations E, F, and G: Force**, § 87(2)(g)). At the 103rd Precinct stationhouse, PO Joseph Bongiorno of that command allegedly slapped § 87(2)(b) in the face (**Allegation H: Force**, § 87(2)(g)) and told Sergeant John Gherardi of that command that § 87(2)(b) "shitted" himself (**Allegation I: Discourtesy**, § 87(2)(g)). PO Walter allegedly spoke discourteously to § 87(2)(b) (**Allegation J: Discourtesy**, § 87(2)(g)) and threatened him with added charges (**Allegation K: Abuse of Authority**, § 87(2)(g)).

§ 87(4-b), § 87(2)(g)

The CCRB found evidence suggesting that PO Walter provided a false official statement when he denied witnessing § 87(2)(b)'s apprehension (**Allegation N: Other Misconduct**). This was referred to IAB under CCRB case number 201805762 on July 17, 2018.

§ 87(2)(b) was charged with criminal contempt in the first degree, and on § 87(2)(b) he was convicted of criminal contempt in the second degree and sentenced to one year imprisonment (16 Board Review).

There is no video evidence in this case.

Findings and Recommendations

Allegation A- Force: At § 87(2)(b) in Queens, Police Officer Christopher Denicker used physical force against § 87(2)(b)

Allegation B - Discourtesy: At § 87(2)(b) in Queens, Police Officer Christopher Denicker spoke discourteously to § 87(2)(b)

Allegation C- Force: At § 87(2)(b) in Queens, Police Officer Shawn Arigoni used physical force against § 87(2)(b)

Allegation D - Force: At § 87(2)(b) in Queens, Police Officer Sean Phillips used physical force against § 87(2)(b)

Allegation E - Force: At § 87(2)(b) in Queens, Police Officer Christopher Denicker restricted § 87(2)(b)'s breathing.

Allegation F- Force: At § 87(2)(b) in Queens, Police Officer Shawn Arigoni restricted § 87(2)(b)'s breathing.

Allegation G - Force: At § 87(2)(b) in Queens, Police Officer Sean Phillips restricted § 87(2)(b)'s breathing.

It is undisputed that PO Walter and PO Moore initially responded to a 911 call made by § 87(2)(b) reporting a robbery-in-progress. The call was placed by § 87(2)(b) the current

husband of § 87(2)(b), § 87(2)(b)'s ex-wife. It is also undisputed that upon the officers' arrival on scene, § 87(2)(b) had fled. Pursuant to a canvass involving § 87(2)(b) and § 87(2)(b) was identified approximately two blocks from the initial incident location. It is undisputed that upon seeing PO Walter and PO Moore pursuing him, § 87(2)(b) jumped the fence of Grace Episcopal Church Cemetery and continued fleeing on foot.

§ 87(2)(b) (01 Board Review) acknowledged fleeing from the officers, but said that after he jumped the fence of the cemetery and saw police vehicles surrounding the area, he kneeled on the pavement and put his hands above his head to signal his surrender. § 87(2)(b) felt a kick in the back of his head causing him to fall forward onto the pavement and to defecate. PO Denicker allegedly stepped on the right side of § 87(2)(b)'s face with his boot. § 87(2)(b) put his hands on the pavement and pushed himself up with his arms. PO Denicker allegedly said, "Stay down, you piece of shit." PO Denicker, PO Arigoni, and PO Phillips allegedly punched § 87(2)(b) in his ribs, his face, his arms, his head, and his back. § 87(2)(b) told the officers, "I'm asthmatic. I can't breathe." § 87(2)(b) alleged that the force being used against him, in conjunction with his preexisting medical condition, caused his breathing to be restricted. PO Denicker allegedly replied, "You're talking, so you can breathe. Shut the fuck up. You should not have run." § 87(2)(b) put his hands over his face and repositioned himself into the fetal position. PO Denicker, PO Arigoni, and PO Phillips allegedly punched and kicked § 87(2)(b) in the ribs repeatedly for an additional minute after he got into the fetal position. § 87(2)(b) denied resisting in any way. § 87(2)(b) heard an officer say, "Alright." § 87(2)(b) was then handcuffed and escorted to a police vehicle and placed inside. § 87(2)(b)'s left ankle and right cheek were swollen as a result of the physical force used against him.

§ 87(2)(b) was seen at § 87(2)(b) while still in police custody, approximately two hours after the incident (02 Board Review). His medical records indicate a history of aggressive behavior and violence, Asthma, Bipolar Disorder, and Mood Disorder. § 87(2)(b) complained of left ankle pain, right elbow pain, and facial pain. Medical staff noted that § 87(2)(b) had multiple abrasions to the face and right elbow, swelling to his left ankle, and pain in regard to range of motion in his elbow. § 87(2)(b) was given a Tetanus shot and his face and elbow abrasions were cleaned. An ACE bandage was applied to his left ankle, and Ibuprofen was prescribed. X-rays revealed soft tissue swelling in his left ankle, but no additional swelling or injury. § 87(2)(b) identified himself to medical personnel as a regular cigarette and marijuana smoker.

Both § 87(2)(b) (03 Board Review) and § 87(2)(b) (04 Board Review) acknowledged that § 87(2)(b) never attempted to rob or assault either of them, but that he had instead violated an order of protection § 87(2)(b) obtained against him. They reported the incident as a robbery-in-progress with the hope that officers would respond expeditiously. § 87(2)(b) said he saw PO Moore and PO Walter chasing § 87(2)(b) through the cemetery. PO Moore fell and injured his ankle. PO Denicker jumped out of the police vehicle, ran toward § 87(2)(b) and tackled him to the ground. § 87(2)(b) kicked the officers. § 87(2)(b) was then handcuffed. § 87(2)(b) denied witnessing any force used against § 87(2)(b) once he was handcuffed.

§ 87(2)(b) denied witnessing § 87(2)(b)'s arrest and only identified § 87(2)(b) to PO Moore and PO Walter. § 87(2)(b) was on the other side of the cemetery during § 87(2)(b)'s apprehension.

PO Walter (08 Board Review) and PO Moore (09 Board Review) both said they witnessed no part of § 87(2)(b)'s apprehension after initially chasing him over the fence and into the "pitch black" cemetery because PO Moore sprained his ankle when his foot either got caught in the cemetery fence (according to PO Walter) or because he tripped over a headstone (according to PO Moore). PO Walter stopped pursuing § 87(2)(b) to help PO Moore because he saw a police vehicle at the opposite end of the cemetery. § 87(2)(b) ran approximately 200 feet more and was apprehended by PO Denicker and PO Arigoni. In § 87(2)(b)'s criminal court complaint, PO Walter said he observed officers attempting to handcuff § 87(2)(b) and that § 87(2)(b) "flailed" his arms and kicked his legs to avoid arrest (28 Board Review).

PO Denicker (05 Board Review) said that § 87(2)(b) was in his vehicle and § 87(2)(b) saw § 87(2)(b) running toward police vehicles through the cemetery with PO Moore, who was injured, running behind him. PO Denicker exited one vehicle and PO Arigoni (06 Board Review) exited another vehicle while PO Phillips (07 Board Review) parked the vehicle PO Arigoni exited from. PO Denicker ordered § 87(2)(b) to stop running multiple times and § 87(2)(b) refused to comply. PO Arigoni and PO Denicker ran toward § 87(2)(b) and used the "minimum amount of force necessary" (according to PO Arigoni) to bring § 87(2)(b) to the ground by grabbing his arms and "lowering" him to the ground. PO Denicker said he ran to § 87(2)(b)'s left arm and PO Arigoni ran to § 87(2)(b)'s right arm, and they told him to put his arms behind his back. § 87(2)(b) did not comply. His arms were tense. § 87(2)(b) wiggled his arms and his body. PO Phillips approached the scene. § 87(2)(b) crossed his arms under his chest. The officers said they gained control of his arms, though they did not specify how. PO Phillips handcuffed § 87(2)(b). PO Denicker, PO Arigoni, and PO Phillips denied all allegations of force, restricted breathing, and discourteous language. PO Denicker added that there was no time to kick or punch § 87(2)(b) because he was apprehended so quickly.

PO Steven Amato (10 Board Review), PO Efrain Estrada (11 Board Review), PO Bongiorno (12 Board Review), and PO Ragonesi (13 Board Review) all acknowledged arriving to the scene at some point, but denied witnessing all or most of § 87(2)(b)'s apprehension, and denied witnessing the alleged force, restricted breathing, and discourteous language. PO Bongiorno and PO Ragonesi said that when they arrived at the scene, officers were struggling to handcuff § 87(2)(b) in the middle of the street, which was not well lit, and that they could only hear § 87(2)(b) screaming. PO Estrada said that he stayed with § 87(2)(b) and § 87(2)(b) during § 87(2)(b)'s apprehension.

PO Walter (20 Board Review), PO Moore (18 Board Review), PO Denicker (22 Board Review), PO Phillips (19 Board Review), and PO Arigoni (21 Board Review) all filed TRI Reports regarding the incident that were consistent with their CCRB statements. PO Walter did not use force toward § 87(2)(b) during his apprehension. PO Moore sustained minor swelling and substantial pain during § 87(2)(b)'s apprehension. A forcible takedown was used in § 87(2)(b)'s apprehension, but no hand strikes or foot strikes were used. § 87(2)(b) sustained minor lacerations/abrasions from intentional actions taken by officers. Three black and white photographs of § 87(2)(b)'s injuries to his face, elbow, and ankle were enclosed in their TRI Reports (32 Board Review), but they do not clearly depict § 87(2)(b)'s injuries. An ISAR filed by Captain Kevin Chan of the 105th Precinct, who was not present during the incident, was consistent with officer statements (29 Board Review). No Line of Duty Report was filed in regard to PO Moore's injury (27 Board Review).

§ 87(2)(g)

Allegation H-Force: At the 103rd Precinct stationhouse, Police Officer Joseph Bongiorno used physical force against § 87(2)(b)

Allegation I-Discourtesy: At the 103rd Precinct stationhouse, Police Officer Joseph Bongiorno spoke discourteously to § 87(2)(b)

Allegation J-Discourtesy: At the 103rd Precinct stationhouse, Police Officer Lance Walter spoke discourteously to § 87(2)(b)

Allegation K-Abuse of Authority: At the 103rd Precinct stationhouse, Police Officer Lance Walter threatened § 87(2)(b)

§ 87(2)(b) said that he “passed out” in the back of PO Bongiorno and PO Ragonese’s police vehicle on the way to the stationhouse and was awoken by a slap in the face by PO Bongiorno. PO Bongiorno and PO Ragonese escorted him into the stationhouse and Sgt. Gherardi, the desk sergeant, asked “Who smells like that?” PO Bongiorno allegedly said, “This guy here ‘shitted’ on himself.” PO Walter escorted § 87(2)(b) to the restroom to clean himself up before lodging him in the holding cell. § 87(2)(b) told PO Walter that he wanted to go to the hospital. PO Walter allegedly said, “You made us run, so shut the fuck up. Look, if you go to the hospital now, you’re going to be there for five or six days. If you just chill the fuck out, I’ll take you to see the judge tonight or maybe Saturday night. If you go to the hospital, we’ll have to add more charges. If you wait to go, you’ll be charged with criminal contempt.” § 87(2)(b) requested medical attention again, and told PO Walter that he was violating his civil rights. PO Walter said, “If you weren’t a ‘shit-bird,’ she wouldn’t have called the police on you and this would have never happened. We only came to talk to you. Why did you run?” § 87(2)(b) ignored PO Walter and attempted to sleep. Approximately two hours later, § 87(2)(b) was transported to the hospital.

PO Bongiorno and PO Ragonese denied that § 87(2)(b) passed out or fell asleep during the transport. § 87(2)(b) had defecated in his pants. PO Bongiorno and PO Ragonese escorted § 87(2)(b) out of their vehicle. PO Bongiorno said he wanted to get § 87(2)(b) into the stationhouse as soon as possible because he smelled and appeared hot and sweaty. PO Bongiorno said he “absolutely did not” slap § 87(2)(b) in the face. PO Bongiorno never announced that § 87(2)(b) “shitted” himself, but said that § 87(2)(b) himself said he “pooped himself.” PO Bongiorno and PO Ragonese immediately cleaned their vehicle and then took meal. They had no further interaction with § 87(2)(b). PO Ragonese denied witnessing PO Bongiorno slap § 87(2)(b) and denied hearing PO Bongiorno make the alleged discourteous statement.

PO Walter said he never saw PO Bongiorno slap § 87(2)(b) and he had no knowledge of § 87(2)(b) defecating on himself. PO Walter processed § 87(2)(b)’s arrest at the

stationhouse. § 87(2)(b) requested medical attention and PO Amato later transported him to the hospital. PO Walter never threatened § 87(2)(b) with additional charges, never told § 87(2)(b) to “shut the fuck up,” and never called him a “shit-bird.” § 87(2)(b) was upset about his arrest and was angry that he had fallen to the ground, but PO Walter did not recall any specific statements § 87(2)(b) made in regard.

PO Denicker, PO Phillips, and PO Arigoni denied being present at the stationhouse at the time this aspect of the incident was alleged to have occurred.

PO Amato said he returned to the stationhouse after § 87(2)(b)'s apprehension and ultimately transported § 87(2)(b) to the hospital for medical treatment, though he did not recall any interactions between § 87(2)(b) and officers. PO Amato denied seeing PO Bongiorno slap § 87(2)(b) and denied hearing any officer use profanity toward § 87(2)(b).

PO Estrada said he drove § 87(2)(b) and § 87(2)(b) to the stationhouse after § 87(2)(b)'s arrest to file a complaint report. § 87(2)(b) was “going crazy” and screaming in the stationhouse, but PO Estrada recalled no additional details.

Sgt. Gherardi (14 Board Review) had no recollection of this incident, though he acknowledged that he was the desk officer at the time and said he “must” have witnessed § 87(2)(b)'s interactions with officers.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Allegation N – Other Misconduct: There is evidence suggesting Police Officer Lance Walter provided a false official statement in violation of Patrol Guide Procedure 203-08.

The CCRB found evidence suggesting that PO Walter provided a false official statement regarding this incident. A spin-off case was referred to IAB in regards, under CCRB case number 201805762. The evidence is as follows:

During PO Walter's CCRB interview on November 29, 2017, PO Walter denied witnessing or hearing any part of § 87(2)(b)'s apprehension firsthand. PO Walter's

justification was that he was approximately 200 feet away with PO Moore, who twisted his ankle, and it was dark out, so visibility was low. PO Walter said he was only informed of § 87(2)(b) being taken to the ground and handcuffed after the fact.

However, the Criminal Court Complaint regarding § 87(2)(b)'s arrest notes that PO Walter reported observing officers attempt to place handcuffs on § 87(2)(b) and that § 87(2)(b) flailed his arms and kicked his legs to avoid being handcuffed and placed under arrest.

NYPD Patrol Guide, Procedure 203-08 states that officers are prohibited from making false official statements, and those who are found to have made such statements will be subject to disciplinary action (26 Board Review).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (15 Board Review).
- PO Denicker has been a member-of-service for four years and this is the first CCRB complaint to which he has been a subject.
- PO Arigoni has been a member-of-service for two years and this is the first CCRB complaint to which he has been a subject.
- PO Phillips has been a member-of-service for six years and has been a subject in four CCRB complaints and six allegations, of which two were substantiated. PO Phillips was also cited for other misconduct.
 - In Case #201503214, the Board determined that PO Phillips grabbed an individual by the neck for four seconds, causing the individual to lose consciousness and fall to the ground. This was captured on body-worn camera. PO Phillips made the following statements to the same individual on his BWC footage: "Shut the fuck up" and "We're here to help you, you fucking idiot." The Board substantiated allegations of force (chokehold) and discourtesy, and recommended charges. The NYPD imposed no penalty for the chokehold allegation. No penalty is listed for the discourtesy allegation. PO Phillips was also cited for other misconduct in this case for allegedly providing a false official statement regarding the use of the chokehold.
- PO Bongiorno has been a member-of-service for four years and this is the first CCRB complaint to which he has been a subject.
- PO Walter has been a member-of-service for seven years and has been a subject in four CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)

- PO Ragonese has been a member-of-service for four years and has been a subject in two CCRB complaints and eight allegations, all of which were sent to mediation. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of May 1, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (17 Board Review).

Squad No.: 14

Investigator: _____

Signature _____ Print Title & Name _____ Date _____

Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature _____ Print Title & Name _____ Date _____